The claims are 1-8, 10-13, 15-23 and 27. Claims 7, 8, 12 and 13 have been amended to better define the intended invention. Support for the amendment may be found in paragraph [0015] of the publication of the subject application, U.S. Publication No. 2007/0166434 ("the '434 publication"). Claim 24 has been cancelled without prejudice or disclaimer of subject matter. Claim 27 has been added to provide Applicants with a more complete scope of protection. Support for the claim may be found in original claim 9. No new matter has been added. Favorable reconsideration of the claims is respectfully requested.

Claims 7, 8, 12 and 13 were objected to for use of the abbreviation for the unit "r$_e$." Claims 7, 8, 12 and 13 have been reviewed carefully in view of the objection and have been amended as deemed necessary to comply with the Examiner's requirements. Specifically, the claims have been amended herein to define the unit "r$_e$." Therefore, Applicants respectfully request withdrawal of the objection.

Claims 1-8, 10-13, 15-19 and 23 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 3,973,044 (Giddey). Claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Giddey in view of WO 03/005832 (Clarke) and GB 2316852 (Biggs). Applicants respectfully traverse these rejections.

Prior to addressing the grounds of rejection, Applicants wish to briefly review certain key features and advantages of the present application.

The present invention is directed toward a rippled wafer comprising a plurality of non-concentric convolutions of a convoluted wafer ribbon. The rippled wafer,

made from baking a sugar-based dough, has an average of at least 12 turns/cm^2 of cross sectional area, wherein a turn is a change in direction of the wafer ribbon of at least 45° and the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. The folded convoluted wafers of the prior art are comprised mainly of flat or straight portions of wafer ribbon with relatively few turns. In contrast, the inclusion of low density, low satiating rippled wafers of the present invention, which is light, crisp and evenly textured with no tooth-packing and no hard "snap" in confectionery products, delivers textural lightness and variation not found in known confectionery products. Paragraph [0023] of the '434 publication. The inventors of the subject invention discovered that the average number of turns for a given cross sectional area directly relates to the crispness of the formed wafer. Paragraph [0067]. Thereby, they invented the wafer of the present invention, which has greater convolutions and exhibits better crispness than the wafers previously known in the art. *Id.* and Tables 4 and 5.

Giddey discloses a proteinaceous food product, most applicable to a simulated meat product (Col. 4, ln 67-68), and a method of producing the product wherein it forms a structure of many small and larger folds. The goal of Giddey is to create a product that closely approximates the structure of natural meat. Col. 2, ln 8-10. Unlike Giddey, which is directed to a proteinaceous material that is folded in an attempt to give it a fibrous texture similar to meat, the subject invention is directed to a wafer, which is a formed, baked sugar-based dough. One skilled in the art would understand that the wafer disclosed in the subject invention refers to a sugar-based dough.

Applicants submit that a wafer is <u>not</u> merely a thin piece of food, as argued by the Examiner. Wafers are a particular baked sugar-based dough characterized by its

"snap" when consumed. They have a crip texture and will break when formed into shapes if not properly handled. Therefore, one skilled in the art would <u>not</u> expect a proteinaceous material and a wafer, e.g., a sugar-based dough, to have the same properties or to react to processing, for example, manipulating the material to form folds, in the same manner. Therefore, one would not look to Giddey to teach a method of folding a wafer. Simulated meat products do not require maintenance of a crip texture like wafers and do not have the same needs in manufacture as wafers. Therefore, there is no reason to believe that the method of Giddey would succesfully work with wafers. Indeed, Applicants believe that it would not.

As noted by the Examiner, Giddey teaches that the parameters of its process may be "altered to obtain products of different properties." However, Applicants submit that this disclosure alone does not teach or suggest that it may be used with wafers, e.g., a baked sugar-based dough, and confectionary products, which have different processing needs than a proteinaceous product. At Col. 5, ln 52-61, Giddey expands on this statement and provides a lengthy list of materials that may be used in its invention. However, the listed products are protein-based materials, which are understood to be textured like the matrix of connective tissue of meat, and unlike the baked texture of a wafer. None of the listed options in Giddey approach anything similar to a wafer or confectionary product and, therefore, one skilled in the art would not expect the method of Giddey to yield successful results with a wafer or confectionary product.

In addition, Giddey fails to teach or suggest that the ripples of the simulated meat product of Giddey are produced having at least 12 turns/cm^2 of cross sectional area, a feature of the claimed invention. As explained above, the present invention teaches that

the average number of turns per cm^2 of the cross sectional area of the wafer are related to the crispness of the formed wafer and that adopting a minimum of 12 turns/cm^2 of cross sectional area attributes a lightness and variation of the wafer not found in wafers in the prior art. As Giddey is unrelated to the production of a wafer or confectionary product, it does not and can not realize the benefits achieved by the number of turns in relation to crispness of the final product.

The Examiner states that Giddey discloses smaller folds in the range of from 0.1 to 0.5 millimeters, yet fails to provide a basis for how this renders the feature of having at least 12 turns/cm^2 of cross sectional area obvious. According to MPEP § 2142, before the applicant is under any obligation to submit evidence of nonobviousness, the examiner must produce a *prima facie* case of obviousness, which requires explicit analysis and an articulated reasoning to support the conclusion of obviousness. Applicants submit that the Examiner has not met this initial burden with regard to the feature of "the rippled wafer having an average of at least 12 turns/cm^2 of cross sectional area, wherein a turn is a change in direction of the wafer ribbon of at least 45° and the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer."

Simply, Giddey fails to disclose or suggest all of the elements of the presently claimed invention. Giddey fails to teach or suggest a rippled <u>wafer</u> comprised of a plurality of non-concentric convolutions and having an average of at least 12 turns/cm^2 of cross sectional area. Consequently, Applicants respectfully request withdrawal of the obviousness rejection.

Clarke and Biggs fail to remedy the deficiencies of Giddey. First, since Giddey relates to a method of making a proteinaceous food product, it provides no

guidance as to how to manipulate a baked sugar-based dough. Therefore, Applicants submit that Giddey would not have been combined with methods of making wafers and confectionary products to yield predictable results. According to MPEP § 2143.01, the mere fact that references can be combined does not render the resultant combination obvious unless the results would have been predictable.

However, even if Giddey were combined with Clarke and Biggs, the combination of references fail to render the presently claimed invention obvious.

Clarke discloses an apparatus and method for producing a regular film of foodstuff, while Biggs discloses a process for shaping a wafer and discloses that a wafer may be shaped into a desired form, such as a fold or bend. These references are cited by the Examiner for teaching the addition of a secondary film, such as layers of ice cream and chocolate, and that the wafer may be pre-coated with chocolate, respectively.

Even if, *arguendo*, the Examiner's positions were taken as true, the combination of references fails to teach or suggest all of the limitations of the claimed invention. The references fail to disclose or suggest a rippled wafer (i) having a pluralty of non-concentric convolutions, (ii) having an average of at least 12 turns/cm^2 of cross sectional area, (iii) a turn that is a change in direction of the wafer ribbon of at least 45° and (iv) a cross sectional area that is the volume of the formed wafer divided by the length of the formed wafer. Therefore, Applicants submit that Giddey, Clarke and Biggs, alone or in any permissible combination, fail to render obvious the present invention and respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

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Respectfully submitted,

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